



IN THE SUPREME COURT OF NAURU
YAREN DISTRICT
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 6/2020

BETWEEN

THE REPUBLIC

AND

WAJEEH UDDIN

Before: Khan, ACJ
Date of Sentencing Submissions: 26 January 2023
Date of Sentence: 3 February 2023

Case to be referred to as: *R v Wajeeh Uddin*

CATCHWORDS: Sentence – Indecent act contrary to s.106 of the Crimes Act 2016.

APPEARANCES:

Counsel for the Republic: S Shah
Counsels for the Defendant: R Tagivakatini

SENTENCE

INTRODUCTION

1. You were initially charged on 21 May 2020 with one count of rape, an alternative count of indecent act and two counts of threatening police officers. On 4 December 2020 the information was amended and you were charged only with an offence of rape and in the alternative indecent act.
2. On 4 February 2022 almost two years after the incident the charge of rape was dropped and you were only charged with the offence of indecent act.
3. It is unfortunate that it took the prosecution so long to lay the appropriate charge as there was no evidence for the charge of rape in the materials placed before me by way of depositions and the evidence that was adduced in your trial.

4. You cannot be blamed for the delay in the disposal of this case as the blame lies with the prosecution for its inordinate delay in laying appropriate charges against you.
5. When the charge was reduced to indecent act you readily agreed to have this matter tried by this Court.
6. Your trial commenced on 23 May 2022 and was completed on 6 June 2022. The judgement was delayed until 13 October 2022 as we had COVID lockdown in June 2022 because of the outbreak of COVID 19 pandemic.
7. Both you and your counsel agreed that the complainant was indecently assaulted and in your defense you suggested that the act was committed by one Able a person who was present during the drinking party which took place at your house on 18 April 2020.

DRINKING PARTY

8. There was a drinking party at your house on 18 April 2020 which was attended to by the complainant, yourself and your 4 other male friends.
9. All of you were drinking Vodka AK47 and the complainant joined in the drinking party quite late by which time all of you had consumed a considerable amount of alcohol. When she joined in, she started to drink quickly, as she stated, she wanted to “catch up” with the others. She became intoxicated and later went to sleep and was the only occupant in your room when you indecently assaulted her by removing her pants and were trying to climb on top of her whilst she was still asleep.
10. You knew the complainant from a previous drinking session which took place at your house.

MAXIMUM PENALTY

11. The maximum penalty for this offence is 5 years imprisonment.

VICTIM IMPACT STATEMENT

12. The complainant blames herself for putting herself in that position and for being exposed after drinking alcohol. She states that when she started drinking the room was full of people and when she woke up she only found you in the room and you were trying to take advantage of her intoxicated position and being asleep.
13. In the victim impact statement the victim claims to be a very strong and independent person and the only reason she went through this case was to ensure that this kind of things did not happen to other women or girls.
14. This case has affected her mentally and she is now more cautious of the people that she associates with.

YOUR PERSONAL CIRCUMSTANCES

15. You are 31 years old, single. You are a first offender.
16. You were born on 11 March 1991 in Peshawar, Pakistan.
17. You left Pakistan in September 2013 because you were persecuted for your ethnicity and for your political affiliation and beliefs by the Taliban.
18. You embarked on a very arduous journey to leave Pakistan and were transferred to Nauru along with other asylum seekers on 7 September 2013. Your claim to be a refugee was declined and you still remain in Nauru.

ALCOHOL

19. At the time of the offending both you and the complainant had consumed a considerable amount of alcohol. The complainant was very intoxicated and asleep at the material time whilst despite being intoxicated you were in control of your senses and tried to take advantage of her.

GUIDANCE OF THE DISTRICT COURT SENTENCES

20. As this matter fell within the jurisdiction of the District Court I was guided by both counsels as to the sentencing approach of the District Court for similar offences. Both counsels submitted that in *Republic v John Raidi* Criminal Case No. 11 of 2018 (unreported) the complainant was 32 years old who was the defendant's sister-in-law was asleep. The defendant touched her on her vagina after putting his hands inside her pants and asked her for sex. He also asked to lick her vagina. The defendant was sentenced to 18 months imprisonment and ordered to serve 6 months imprisonment and was placed on probation for a period of 12 months to be of good behavior under the Criminal Justice Act 1999.
21. In *Republic v Suzuki Taumea* Criminal Case No. 36/2018 (unreported) the defendant was found guilty for the offence of indecent act (two counts) and pleaded guilty to the offence of being found in a certain place without lawful authority. The offending took place in July 2016 when he was a campaign manager of a candidate who lived in Meneng constituency. The complainant was related to the candidate and lived in his house with her husband. Both the accused and the complainant were adults. When the election results were announced at about 1am he went out drinking. The following morning at 10am he entered the victim's room and unbuttoned his overalls, exposing his underwear to the victim. He asked the victim for sex and she refused and told him to leave. He did not go and asked to perform cunnilingus on her. She refused and called her husband and the defendant told her that the husband was drinking elsewhere. Later the defendant was beaten by the victim's husband and thereafter the defendant visited the victim and her husband and apologized to them. He did not lodge any police complaint against the victim's husband. The defendant was sentenced by Mr Lomaloma, Resident Magistrate, to a fine of \$300 for count one and a fine of \$200 for count two.

SENTENCING PRINCIPLES

22. I have taken into consideration the sentencing principles set out in ss.277, 278 and 279 of the Crimes Act 2016.
23. I enter a conviction against you for the offence of indecent act.
24. Having received guidance from the cases of *Republic v Raidi* and *Republic v Suzuki Taumea*, I sentence you a term of 18 months imprisonment. I note that you spent a period of 8 days in custody after the charges were laid against you and have been in custody awaiting sentence since 13 October 2022, which I calculate to 4 months and take that into account and reduce your sentence to a term of 14 months imprisonment.
25. I order that you are to serve a sentence of 14 months imprisonment.

DATED this 3 day of February 2023



Mohammed Shafiullah Khan
Acting Chief Justice

